

Who's Got the Power:

How to urgently decarcerate Louisiana in the era of COVID-19

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About this guide

As COVID-19 cases continue to rise, the virus remains a threat to incarcerated people. Use this document to understand who has the power to mitigate that threat and release people from jails and prisons to protect those incarcerated in Louisiana.

For many years, Louisiana has been in a crisis of mass incarceration. The novel coronavirus has exacerbated and exposed the fact that far too many people are held in jails and prisons. As of December 31, 2019, there were 31,609 people serving sentences in Louisiana jails and prisons. Each day, about 15,000 people are held in Louisiana's jails. At the end of March 2020, the first person held in a Louisiana state prison contracted COVID-19. In mid-April, the medical director and a warden of a state prison in Avoyelles Parish died of COVID-19.

Many people across the state urged the governor, the head of the Department of Corrections and Public Safety (DOC), and local lawmakers to act within their power to quickly and safely release people from jails and prisons. Unfortunately, many, including lawmakers themselves, seem unsure about where that power lies or what it entails. This lack of clarity, coupled with historical reluctance to move quickly to fix Louisiana's mass incarceration crisis, led to complicated processes, resulting in minimal releases from jails and prisons. Forty-two percent of incarcerated people tested for COVID-19 by the state Department of Corrections were positive.¹ As of July 27, 2020, 17 people held in Louisiana's prisons and three prison staff members had died from COVID-19.² These numbers are already too high.

The charts below outline who has the power to release people, where in the law that power lies, and how many people could be released if that power were properly used.

Gubernatorial powers

Policymaker	Power without declaration of emergency	Legal basis for power	Power in state of public health emergency	Legal basis for power
Governor On March 11, Governor John Bel Edwards (JBE) declared a state-wide public health emergency. He has updated those orders continuously, and the public health emergency still exists.	JBE has the power to grant reprieves to people convicted of crimes who have paid all fines and costs related to those crimes.	Louisiana State Legislature, Revised Statute (RS) 15: 572A	JBE has special powers during a state of public health emergency to close, mandate the evacuation of, or decontaminate any facility where it is reasonable to believe that it may endanger public health. ³	RS 29: 769

Policymaker	Power without declaration of emergency	Legal basis for power	Power in state of public health emergency	Legal basis for power
Governor	The governor can pardon a person, commute a person's sentence, and cancel a person's fines and other punishments only after he receives a recommendation from the Board of Pardons. ⁴	RS 15: 572A	JBE has the power during a state of emergency to order the evacuation of all or part of the population from any threatened area in the state of Louisiana if he deems this action to be necessary to save lives or lessen a disaster. ⁵	RS 29: 724
			JBE has the power during a state of emergency and public health emergency to suspend regulatory statutes for conducting state business or to suspend the orders, rules, or regulations of any state agency if following the rules would prevent, interfere with, or delay actions necessary to respond to the emergency.	RS 29: 724 and RS 29: 766

Powers of other justice system actors

Policymaker	Power	Legal basis for power
Secretary of Department of Corrections and Public Safety (DOC) Jimmy Leblanc	Sec. Leblanc can furlough people serving time in any correctional facility, if there is a plan in place that Sec. Leblanc approves. For certain convictions, people can be furloughed only with security escort and in limited circumstances.	RS 15: 833
	Sec. Leblanc can release people convicted of substance-related offences to intense parole supervision if they <ul style="list-style-type: none"> > are willing to participate in parole supervision > have been convicted and are serving a sentence for first or second possession or possession with the intent to distribute a dangerous substance > have no convictions for a crime of violence or a sex offense > have not been previously released this way > have served at least two years in physical custody and is within one year of release 	RS 15: 574.62
	Sec. Leblanc, through the division of probation and parole, can recommend home incarceration for people convicted of felonies.	Louisiana Laws Code of Criminal Procedure (CCRP) CCRP Art. 894.2

Policymaker	Power	Legal basis for power
Committee on Parole	The Committee on Parole has the power to grant medical parole to any person convicted of a crime who is categorized as <ul style="list-style-type: none"> > “permanently disabled” > “terminally ill” > “limited-mobility” 	RS 15: 574.20
	Within the Committee on Parole, the Board of Pardons can decline to sanction people to incarceration while they are waiting to hold hearings about whether the person violated parole.	RS 15: 574.7
	The Board of Pardons can recommend that the governor grant pardons or commute the sentences of people who have been convicted of state crimes. ⁶	RS 15: 572
Mayors	Mayors can parole and release people arrested or detained for violation of municipal ordinances. Mayors can also grant this power to presiding judges and officials of municipal courts.	RS 15: 574.15 and RS 15: 81
Sheriffs or administrators of multi-parish prisons	Sheriffs or administrators of multi-parish prisons can approve a furlough or temporary release for people serving time in their facilities. ⁷	RS 15: 811
	Sheriffs or administrators can approve a furlough or temporary release for people serving time for certain crimes only in the last six months of their sentence. ⁸	RS 15: 811E
	Sheriffs or administrators of multi-parish prisons may release people who have been sentenced to a parish prison as if they were on parole.	RS 15: 571.13
Chiefs of police	Chiefs of police can direct officers to cite people instead of arresting them. Citations can be given for misdemeanors, felony theft or possession of stolen things that are valued at \$500—\$1,000, writing bad checks, driving without a driver’s license, or driving without a valid driver’s license.	CCRP 211
	In New Orleans, the chief of police can direct police officers to issue a summons to, instead of arresting, a person who violates city ordinances.	Code of the City of New Orleans, Louisiana, Chapter 54, Article I, Sec. 54-28
District attorneys	District attorneys can use their role-based discretion to decline to prosecute cases.	
	District attorneys can decline to request bail for people charged with an offense.	
	District attorneys can request sentences that do not include spending any time in prison or that include home incarceration.	CCRP 894.2

Policymaker	Power	Legal basis for power
District Court judges presiding over criminal cases	Judges can use their role-based discretion to release people accused of certain crimes on their own recognizance or with a signature.	
	Judges can grant bond reduction motions filed by defense attorneys.	
	Judges can sentence people to sentences that do not include imprisonment.	
	Judges can require that certain people complete community service and suspend all or part of that person’s sentence. These people cannot have been previously convicted of a felony, and the maximum sentence for their offense must be 30 years or less.	CCRP 893.5
	Judges can suspend sentences for all misdemeanors, except criminal neglect of family or stalking.	CCRP 894
	Judges can amend the sentences for people who have begun to serve a sentence. The sentence must be for imprisonment without hard labor or for a misdemeanor.	CCRP 881

Endnotes

- 1 Julie O’Donoghue, “Forty-Two Percent of Louisiana Inmates Tested Have Been Positive for COVID-19,” Louisiana Illuminator, July 12, 2020, <https://lailuminator.com/2020/07/12/forty-percent-of-louisiana-inmate-covid-19-tests-are-positive-experts-say-thats-too-high/>.
- 2 Louisiana Department of Public Safety & Corrections, accessed July 7, 2020, <https://doc.louisiana.gov/doc-covid-19-testing/>.
- 3 This release mechanism applies to everyone held in DOC custody (31,609 people: 16,567 in local facilities, 15,042 in state facilities), as well as to people held pretrial in jails (approximately 15,000 daily). See ACLU Louisiana, “Justice Can’t Wait: An Indictment of Louisiana’s Pretrial System,” https://www.laclu.org/sites/default/files/field_documents/aclu_la_justicecantwait-report_02102020_online.pdf.
- 4 According to Governor Edwards’s staff and staff at DOC, this release mechanism applies to about 100 people.
- 5 This release mechanism applies to everyone held in DOC custody (31,609 people: 16,567 in local facilities, 15,042 in state facilities), as well as to people held pretrial in jails (approximately 15,000 daily according to 3/14/2020 ACLU-LA report).
- 6 According to Governor Edwards’s staff and staff at DOC, this release mechanism applies to about 100 people.
- 7 This mechanism applies to people serving state time in jails (16,567 people based on 12/31/2019 DOC data).
- 8 Among these crimes are more serious offenses, such as murder, aggravated kidnapping, armed robbery, and rape.

For more information

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